



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Dictyon LLC

File: B-405504

Date: November 16, 2011

Raffaella Luciani, Dictyon LLC, for the protester.
Luisa M. Alvarez, Esq., Department of State, for the agency.
Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency applied unstated criteria in its evaluation of protester's proposal is denied where the record reflects that the agency's evaluation was consistent with terms of solicitation.
 2. Protest that agency failed to exercise required diligence in verifying protester's past performance references is denied where the agency reasonably attempted to evaluate the past performance information provided in the proposal.
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DECISION

Dictyon LLC, protests its exclusion from the competitive range by the Department of State (DOS), under request for proposals (RFP) No. SFSIAQ11R0031, a total small business set-aside for foreign language instruction and testing.

We deny the protest.

DOS issued the RFP on June 15, 2011, seeking to establish multiple blanket purchase agreements (BPA) with commercial language schools to provide language instructors and other specialists capable of teaching, conducting examinations, and developing language training materials. The RFP stated that awards would be made on the basis of three evaluation factors--technical quality, past performance, and price--and that technical quality and past performance, when combined, were equal in significance to price. The RFP divided DOS' requirements into six contract line item numbers (CLIN): (1) language instructor/curriculum developer, (2) instructor/curriculum developer II, (3) language tester, (4) language examiner, (5) lead

curriculum developer and trainer, and (6) lead educational technology developer and trainer. RFP at 5.

DOS received ten proposals in response to the RFP. A three-member technical evaluation panel (TEP) was established to review the proposals. After the TEP's preliminary evaluation, two proposals were rated excellent, three proposals were rated good, one proposal was rated fair, two proposals (including Dictyon's proposal) were rated poor, and two proposals were rated unsatisfactory. DOS then established a competitive range limited to the six firms with proposals rated excellent, good, and fair (Dictyon was not included in the competitive range), and conducted discussions those firms. Following discussions, the DOS established BPAs with the five highest-rated firms. Dictyon was informed that it was not selected for a BPA on August 3. Dictyon then received an oral debriefing on August 8, and filed this protest later that day. Dictyon asserts that DOS' evaluation of its proposal was flawed, and that the reasons for its poor rating were unfounded.

The record here contains the TEP chairperson's memorandum, as well as the underlying score sheets of the three panel members. The score sheets demonstrate that, under the technical quality evaluation factor, two of the evaluators rated Dictyon's proposal as "poor," while the third evaluator rated the proposal as "fair." Agency Report (AR), Tab 5, TEP Documents, at 7-18. Under the past performance factor, all three evaluators rated Dictyon's proposal "poor." *Id.* The TEP rated Dictyon's proposal as poor overall. AR, Tab 7, Determination and Findings, at 1. In the TEP memorandum, the TEP chairperson explained that the poor rating was based on several weaknesses in the proposal. First, the TEP concluded that Dictyon's proposed management staff appeared to be inexperienced and had little educational experience. Second, the TEP concluded that Dictyon had not addressed the CLINs, and appeared to only offer contractors to fill CLIN 1 and CLIN 2 roles. Third, the TEP was not able to substantiate much of Dictyon's past performance, and ultimately concluded that Dictyon had documented little past performance in delivering language services. Dictyon disputes the weaknesses assessed against its proposal.¹

In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals, but instead will examine the record to determine whether the

¹ Dictyon also challenges the agency's statement, apparently made during Dictyon's debriefing, that Dictyon's proposed personnel were assessed as a weakness in the proposal because the TEP could not determine whether the personnel were available, because several resumes indicated current employment with firms other than Dictyon. While comments on personnel availability were present in some of the underlying score sheets, this criticism was not incorporated into the TEP memorandum, and does not appear to have influenced the decision to exclude Dictyon from the competitive range.

agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with the agency's judgment in its evaluation does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

Concerning the TEP's assessment of its management team, Dictyon asserts that the evaluation was improper because the statement of work did not address a contractor's management roles and the RFP did not otherwise provide specific guidance on what managerial processes a firm was expected to implement in support of the contract. However, the RFP did state, among the requirements for the technical quality evaluation factor, that offerors "must submit a sampling of resumes of their management team." RFP at 67. We conclude that the requirement to submit resumes of management personnel fairly put offerors on notice that the capabilities of its proffered management staff would be assessed as a part of the technical quality evaluation. A solicitation need not identify every possible consideration under each stated evaluation factor, provided the matters the agency considers are reasonably related to, or encompassed by, the stated criteria. Avogadro Energy Sys., B-244106, Sept. 9, 1991, 91-2 CPD ¶ 229 at 4.

Turning to Dictyon's proposal, it is apparent that Dictyon identified three resumes as constituting its management team. Proposal, Addendum A, at 1-3. However, one of the proffered resumes demonstrated no management education or experience, while a second resume demonstrated no management education and less than one year of management experience. Id. Only one of the three resumes demonstrated substantial management experience. Id. Given this record, we have no basis to conclude that the agency's evaluation regarding the inexperience of Dictyon's management team was unreasonable or otherwise improper.

Dictyon's protest does not specifically respond to the TEP's determination that its proposal did not address the CLINs, and appeared to only offer contractors to fill CLIN 1 and CLIN 2 roles.² Our review of the record, however, supports the TEP's conclusions. While Dictyon proposed rates for each of the six CLINs in the RFP, it did not identify personnel to fill each role. Rather, Dictyon provided a proposal addendum that contained over 50 resumes undifferentiated by CLIN, each of which appeared to be relevant to the language instructor/curriculum developer, or instructor/curriculum developer II roles. See Proposal, Addendum A.

² Dictyon does note that the agency reserved the right to award fewer than all six CLINs. However, the reservation of this right does not mean that an offeror's failure to designate personnel for the majority of CLINs could not reasonably be considered a proposal weakness.

Finally, Dictyon disputes the TEP's conclusion that its proposal documented little past performance in the delivery of language services. In this regard, the record reflects that Dictyon submitted three past performance references with its proposal. While Dictyon's first reference--relating to a contract with the Department of Defense for intensive language instruction--did not present any concerns (it was considered a strength by one evaluator), Dictyon's second and third references were considered to be problematic by all three evaluators. Dictyon's second past performance reference purported to cover a language services contract with DOS, however, with respect to this reference, Dictyon acknowledged that "we currently do not have a specific contract in place," and provided no past or present contract number. Proposal, Addendum B, at 3. While Dictyon did provide a point of contact for the reference, the record reflects that the TEP was unable to reach the reference after multiple attempts. Ultimately, the TEP was unable to substantiate this past performance reference. Dictyon's third reference related to a contract with the Department of the Treasury, which the TEP considered to be small in scope by comparison to this RFP's requirements.

Dictyon asserts that the agency's review of its second past performance reference was improper because the RFP did not require an offeror to provide the information that the TEP asserted was missing from the reference, such as a contract number. Instead, the RFP only stated that offerors were required to show:

Documented successful past performance providing qualified language instructors. Provide names and contact information for at least three but not more than five references who can describe and document Contractor's successful past performance providing qualified foreign language instructors.

RFP at 67. Dictyon also asserts that DOS may not have exercised adequate diligence in its attempt to reach the point of contact for the reference.

While the RFP here did not specifically state that offerors should provide information concerning their past performance references beyond a point of contact, it is an offeror's responsibility to submit a well-written proposal, which allows a meaningful review by the agency. International Med. Corps., B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 8. Here, the protester did not provide sufficient information concerning its reference to allow the TEP to review the reference in the event that the point of contact could not be reached. Further, an agency is only required to use reasonable efforts to contact an offeror's past performance references; it is not required to make multiple attempts to contact such references. See OSI Collection Servs., Inc.; C.B. Accounts, Inc., B-286597.3 et al., June 12, 2001, 2001 CPD ¶ 103 at 9.

In this context, Dictyon has not shown that the agency's efforts, or evaluation, were unreasonable.

The protest is denied.

Lynn H. Gibson
General Counsel